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15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**  
 17 **SAN FRANCISCO DIVISION**

18 SYNOPSYS, INC.,	)	CASE NO. C-03-2289-MJJ (EMC)
19 Plaintiff,	)	CASE NO. C-03-4669-MJJ (EMC)
20 v.	)	
21 RICOH COMPANY, LTD.,	)	
22 Defendant.	)	
23 RICOH COMPANY, LTD.,	)	<b>RICOH'S MOTION TO QUASH</b>
24 Plaintiff,	)	<b>SUBPOENAS</b>
25 v.	)	
26 AEROFLEX INCORPORATED, et al.,	)	
27 Defendants	)	

1        In April 2006, Synopsys and the Aeroflex defendants moved to compel two more deposition  
2 days of a third party resident of Japan, Dr. Hideki Kobayashi. Ricoh objected to the motion and sought  
3 a protective order, pointing out that Dr. Kobayashi already had been deposed for two days. On March  
4 30, 2006, this Court after considering all of the issues raised permitted Dr. Kobayashi to be deposed for  
5 “one additional day”: “The Customer Defendants are entitled to take *one additional day* of the  
6 deposition of Dr. Kobayashi, the first-named inventor of the patent-in-suit.” D.E. 414, at 3, emphasis  
7 added. The parties agreed to split the cost of Dr. Kobayashi traveling to the U.S. so he could attend his  
8 one day deposition. Dr. Kobayashi was deposed for a very full day, from 9:30 am to nearly 7 pm,  
9 thereby having testified for three full days in this matter. At the end of the day, counsel for defendants  
10 served Dr. Kobayashi with two subpoenas – the first ignoring the Order by the Court and purporting to  
11 require even more deposition testimony from Dr. Kobayashi, and second requiring his attendance at  
12 trial. (Exh. 1&2.)

13        The subpoenas should be quashed, and Synopsys’ counsel should be sanctioned for their  
14 deliberate disregard of this Court’s order. Those subpoenas are a gross violation of the Court’s explicit  
15 instructions that the deposition be limited to only one day. Synopsys had sought two additional days of  
16 Dr. Kobayashi’s deposition; Ricoh objected and sought to block any further testimony. Thus, this Court  
17 has already been presented with cross-motions to compel and to quash. Ruling on the cross motions, the  
18 Court instructed the parties that Dr. Kobayashi may be deposed for one additional day. After that  
19 deposition day was concluded, defendants’ counsel blatantly violated this Court’s order by issuing new  
20 subpoenas for additional testimony.

21        The subpoenas are invalid because they were served under false pretenses. There is no question  
22 that Dr. Kobayashi could not have been subpoenaed in Japan, where he lives. Because there were no  
23 Embassy or consulate deposition dates available that would work for counsel and the witness, the parties  
24 agreed that they would split the cost of Dr. Kobayashi’s travel to the U.S. so he could provide his  
25 additional day of testimony. The only reason that Dr. Kobayashi was in the U.S. was to testify. To lure  
26 a witness under false pretenses into a jurisdiction and serve him with a subpoena is deplorable and a  
27 violation of the federal rules, and renders void the subpoena. *See Wyman v. Newhouse*, 93 F.2d 313 (2d  
28 Cir. 1937) (fraudulent inducement into the jurisdiction serves as a defense to service).

1       The Court already has acknowledged that it did not have jurisdiction over Dr. Kobayashi.  
2 Service of subpoenas upon resident of Japan temporarily in the jurisdiction pursuant to an agreement  
3 that he testify for one day cannot create that jurisdiction. Dr. Kobayashi has retuned to Japan and is no  
4 longer in the U.S. As the Court never had jurisdiction, it cannot enforce the invalid subpoenas. Thus,  
5 the subpoenas should be quashed.

6       The subpoenas also are invalid because counsel failed to include the required witness fee. Rule  
7 45 requires the inclusion of a mileage fee from the residence of the witness to the location of the  
8 testimony. Dr. Kobayashi is a resident of Tokyo, Japan, and the site of the testimony is San Francisco –  
9 about 11,000 miles round trip. At the General Services Administration (GSA) 2006 *per diem* rate of  
10 \$1.07 per mile, the witness should have been provided a check in the amount of \$11,770 for each  
11 subpoena. However, no witness fee was included with either subpoena, rendering them defective and  
12 unenforceable.

13       Counsel for Synopsys and the Aeroflex defendants have not attempted to defend the validity of  
14 the subpoenas, but instead have claimed that additional testimony is needed from Dr. Kobayashi. They  
15 made this same argument in April, and this Court permitted one additional day. There is point that  
16 discovery must come to an end, and after three days of testimony from this third party, we are at that  
17 point. The subpoenas should be quashed, and Ricoh receive its fees and costs pursuant to 28 U.S.C.  
18 1927.

19  
20 Dated: June 7, 2006

DICKSTEIN SHAPIRO MORIN & OSHINSKY

21  
22       By: /s/ Kenneth W. Brothers  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICOH COMPANY, LTD.,	)	CASE NO. CV 03-4669-MJJ (EMC)
Plaintiff,	)	
vs.	)	
AEROFLEX INC., et al.,	)	CASE NO. CV 03-2289-MJJ (EMC)
Defendants.	)	[PROPOSED] ORDER GRANTING PLAINTIFF RICOH'S MOTION TO QUASH SUBPOENAS
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SYNOPSYS, INC.,	)	
Plaintiff,	)	
vs.	)	
RICOH COMPANY, LTD.,	)	
Defendant.	)	

Upon consideration of RICOH'S MOTION TO QUASH SUBPOENAS, and supporting evidence, Defendants' Opposition, and supporting evidence, and any reply and additional argument, and having conducted a hearing on the motions, and the Court being fully advised of the premises, the Court hereby GRANTS Ricoh's Motion to Quash the Subpoenas served on Dr. Hideki Kobayashi and awards Ricoh its reasonable attorneys' fees incurred as a result of the Aeroflex Defendants'/Synopsys' service of the subpoenas.

IT IS SO ORDERED.

DATED:

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The Honorable Edward Chen  
Magistrate Judge, United States District Court